SENATE BILL No. 491

Introduced by Senator Maldonado

February 26, 2009

An act to add Section 10166 to the Business and Professions Code, and to add Sections 403.5, 5505.5, 14157, 22113, and 50131 to, and to add Division 1.9 (commencing with Section 4992) to, the Financial Code, relating to mortgage loan originators.

LEGISLATIVE COUNSEL'S DIGEST

SB 491, as introduced, Maldonado. Mortgage loan originators: Nationwide Mortgage Licensing System and Registry.

The Real Estate Law provides for the regulation and licensure of real estate brokers and real estate salespersons by the Real Estate Commissioner. The California Finance Lenders Law provides for the regulation and licensure of finance lenders and brokers by the Commissioner of Corporations. The California Residential Mortgage Lending Act provides for the regulation and licensure of residential mortgage lenders and servicers by the Commissioner of Corporations. The Banking Law provides for the regulation of state commercial and industrial banks by the Commissioner of Financial Institutions. The Savings Association Law provides for the regulation of state savings associations by the Commissioner of Financial Institutions. The California Credit Union Law provides for the regulation of state credit unions by the Commissioner of Financial Institutions. A willful violation of specified provisions of those acts is a crime.

Existing federal law, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, provides for a Nationwide Mortgage Licensing System and Registry for the state licensing and registration of state-licensed loan originators, as defined, and the registration of registered loan originators, as defined. The act requires state compliance with the requirements of the act, as specified, and sets forth, among others, minimum testing and education standards.

This bill would provide for state compliance with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, and would require the state-registration of mortgage loan originators, as defined. The bill would require the Department of Real Estate, the Department of Corporations, and the Department of Financial Institutions to implement that registration in accordance with the above-described federal standards, and would impose registrant examination and education requirements, including continuing education requirements. The bill would implement specified recordkeeping and reporting requirements, and would set forth penalty provisions for the violation thereof.

Because a violation of those provisions by certain licensees may be punished as crimes under their respective licensing laws, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 10166 is added to the Business and Professions Code, to read:

10166. An individual licensee and each employee of a licensee, if acting as a mortgage loan originator, as defined in Section 4992 of the Financial Code, shall apply, either electronically or in writing to the commissioner, for a registration to act as a mortgage loan originator. The commissioner may prescribe the format and content of the mortgage loan originator registration application, which shall meet the minimum requirements for licensing of a mortgage loan originator pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. Sec. 5101 et seq.).

SEC. 2. Section 403.5 is added to the Financial Code, to read:

403.5. Each employee of a bank organized under this division, if acting as a mortgage loan originator, as defined in Section 4992, shall apply, either electronically or in writing to the commissioner, for a registration to act as a mortgage loan originator. The commissioner may prescribe the format and content of the mortgage loan originator registration application, which shall meet the minimum requirements for licensing of a mortgage loan originator pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. Sec. 5101 et seq.).

SEC. 3. Division 1.9 (commencing with Section 4992) is added to the Financial Code, to read:

DIVISION 1.9. SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING

4992. For purposes of this division, the following definitions shall apply:

(a) (1) "Licensing agency" means the Department of Real Estate for licensed real estate brokers and salespersons, and their employees, the Department of Corporations for licensed finance lenders and brokers and licensed residential mortgage lenders and servicers, and their employees, and the Department of Financial Institutions for employees of commercial and industrial banks and savings associations and credit unions organized in this state, when acting as mortgage loan originators.

(2) "Licensing agency's fund" means either the Real Estate Fund pursuant to Section 10450 of the Business and Professions Code, the State Corporations Fund pursuant to Section 13978.6 of the Government Code, the Financial Institutions Fund pursuant to Section 265, or the Credit Union Fund pursuant to Section 14354, as applicable.

(3) "Licensing law" means the Real Estate Law (Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code), the California Finance Lenders Law (Division 9 (commencing with Section 22000)), the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000)), a commercial or industrial bank organized under the Banking Law (Division 1 (commencing with Section 99)), a savings association organized under the Savings Association Law (Division 2 (commencing with Section 5000)), or a credit union organized under the California Credit Union Law (Division 5 (commencing with Section 14000)), as applicable.

(b) (1) "Mortgage loan originator" means any individual who takes a residential mortgage loan application and offers or negotiates terms of a residential mortgage loan for compensation or gain, as defined in paragraphs (3), (7), and (11) of Section 5102 of the SAFE Mortgage Licensing Act of 2008.

(2) "Mortgage loan originator" does not include any of the following:

(A) An individual who performs purely administrative or clerical tasks on behalf of a mortgage loan originator. The term "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(B) A person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator, or by any agent of that lender, mortgage broker, or other mortgage loan originator. The term "real estate brokerage activities" has the same meaning as set forth in subparagraph (D) of paragraph (3) of Section 5102 of the SAFE Mortgage Licensing Act of 2008.

(C) A person that is solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11 of the United States Code.

(c) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators.

(d) "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, or residential real estate upon which is constructed or intended to be constructed a dwelling. "Dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence.

(e) “SAFE Mortgage Licensing Act of 2008” means the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. Sec. 5101 et seq.).

(f) “Unique identifier” means a number or other identifier that permanently identifies a mortgage loan originator and that is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

4992.1. (a) An individual may not engage in the business of a mortgage loan originator without doing both of the following:

(1) Obtaining and maintaining annually, a registration as a mortgage loan originator from the licensing agency, as described in subdivision (b).

(2) Obtaining a unique identifier, as described in subdivision (b).

(b) Upon the effective date of this act or upon commencing activity as a mortgage loan originator, a mortgage loan originator shall apply for his or her registration and unique identifier from the licensing agency in a form prescribed by the licensing agency.

(c) In accordance with the SAFE Mortgage Licensing Act of 2008, the licensing agency shall register each state mortgage loan originator with the Nationwide Mortgage Licensing System and Registry, and provide each mortgage loan originator with a unique identifier.

(d) In order to fulfill the purposes of subdivision (c), the licensing agency may establish relationships or contract with the Nationwide Mortgage Licensing System and Registry or any other entity designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain registration and unique identifier records or files.

(e) (1) An individual who fails to comply with this section may be subject to a civil penalty in the amount of ____ dollars ($____). The licensing agency may bring an action in an appropriate court of this state to collect payment of that penalty.

(2) The licensing agency may suspend or revoke the license of a licensed individual who fails to pay a penalty imposed pursuant to this section.

(3) All penalties paid or collected under this section shall be deposited into the licensing agency’s fund and shall, upon appropriation by the Legislature, be available for expenditure for

expenses related to the administration of this division and in accordance with federal law.

4992.2. (a) In connection with an application to the licensing agency for registration as a mortgage loan originator, every applicant shall furnish to the licensing agency, for submission to the Nationwide Mortgage Licensing System and Registry, information concerning the applicant's identity, including the following:

(1) Fingerprints or fingerprint images, for purposes of performing a state and federal criminal history background check.

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the licensing agency to obtain both of the following:

(A) An independent credit report from a consumer reporting agency.

(B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(b) The requirements of subdivision (a) are satisfied if the applicant has previously complied with similar provisions to the satisfaction of the licensing agency.

(c) The licensing agency shall request subsequent arrest notification service from the Department of Justice, as provided pursuant to Section 11105.2 of the Penal Code, in connection with an applicant for registration as a mortgage loan originator.

4992.3. Notwithstanding any other provision of law, and in accordance with subsection (b) of Section 5104 of the SAFE Mortgage Licensing Act of 2008, the licensing agency shall not issue a registration to act as a mortgage loan originator to an applicant unless the licensing agency makes all of the following findings:

(a) The applicant has never had a mortgage loan originator license revoked in any other governmental jurisdiction.

(b) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court, under either of the following conditions, however, any conviction expunged from the applicant's record shall not be considered a conviction for purposes of this subdivision:

(1) During the seven-year period preceding the date of the application for licensing.

(2) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.

(c) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the division.

(d) The applicant has complied with the education and written testing requirements in Section 4992.4, and any net worth or surety bond requirements, if applicable.

4992.4. (a) In addition to any requirements under his or her licensing law, as applicable, an applicant for registration as a mortgage loan originator shall complete at least 20 hours of education courses, which shall include the following:

(1) Three hours of federal law and regulations.

(2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of this section, education courses are only acceptable if they have been reviewed and approved, or otherwise deemed acceptable, by the Nationwide Mortgage Licensing System and Registry, in accordance with the SAFE Mortgage Licensing Act of 2008, and by the licensing agency. Education may be offered in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry, in accordance with the SAFE Mortgage Licensing Act of 2008, and by the licensing agency. The licensing agency may substitute any of the courses described in subdivision (a) for the course requirements under the licensing law, subject to a finding that the course requirements in subdivision (a) are substantially equivalent to, and meet the intent of, the provisions of the SAFE Mortgage Licensing Act of 2008, as applicable.

(c) Before being issued a registration to act as a mortgage loan originator, an individual shall pass a qualified written test developed or otherwise deemed acceptable by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved or otherwise deemed acceptable by the Nationwide Mortgage Licensing System and Registry.

(d) A written test shall not be treated as a qualified written test for purposes of this section, unless the test adequately measures the applicant's knowledge and comprehension in the following subject areas: ethics, federal law and regulation pertaining to mortgage origination, state law and regulation pertaining to mortgage origination, and federal and state law and regulation relating to fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(e) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or any subsidiary or affiliate of the employer of the applicant, or any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(f) An applicant shall not be considered to have passed a qualified written test administered pursuant to this section unless the individual achieves a test score of not less than 75 percent correct answers to the questions.

(g) An applicant who fails the qualified written test may retake the test up to three consecutive times, although at least 30 days must pass between each retesting.

(h) An applicant who fails three consecutive retests shall wait at least six months before retesting.

(i) A mortgage loan originator who fails to maintain a valid registration for a period of five years or longer or who fails to register as a mortgage loan originator in accordance with applicable state law shall retake the qualified written test.

4992.5. The licensing agency shall prescribe the form for registrant compliance with the reporting requirements described under subsection (e) of Section 1505 of the SAFE Mortgage Licensing Act of 2008, pursuant to Nationwide Mortgage Licensing System and Registry standards.

4992.6. The minimum standards for annual renewal of registration as a mortgage loan originator shall include the following:

(a) The mortgage loan originator continues to meet the minimum standards for obtaining registration as a mortgage loan originator.

(b) The mortgage loan originator satisfies the annual continuing education requirements described in Section 4992.7.

4992.7. (a) A mortgage loan originator shall complete at least eight hours of continuing education annually, which shall include at least three hours relating to federal law and regulations, two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues, and two hours related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subdivision (a), continuing education courses and course providers shall be reviewed and approved by the licensing agency and the Nationwide Mortgage Licensing System and Registry.

(c) The licensing agency shall have the authority to substitute any of the courses described in subdivision (a) for the course requirements of provisions under the licensing law, subject to a finding that the course requirements in subdivision (a) are substantially equivalent to, and meet the intent of, those provisions.

(d) Nothing in this section shall preclude any education course, as approved by the licensing agency and the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity that is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of the employer or entity.

(e) Continuing education may be offered either in a classroom, online, or by any other means approved by the licensing agency and the Nationwide Mortgage Licensing System and Registry.

(f) A mortgage loan originator may only receive credit for a continuing education course in the year in which the course is taken.

(g) A mortgage loan originator may not take the same approved course in the same or successive years to meet the requirements of this section for continuing education.

(h) A mortgage loan originator who is an instructor of an approved continuing education course may receive credit for his or her own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(i) An individual who successfully completes the education requirements approved by the Nationwide Mortgage Licensing System and Registry in any state other than California shall be granted credit by the licensing agency towards completion of continuing education requirements in this state.

4992.75. (a) As often as the licensing agency deems necessary and appropriate, the licensing agency shall examine the affairs of each individual who is required to register pursuant to Section 4992.1 for compliance with this division. The licensing agency shall appoint suitable persons to perform these examinations. The licensing agency may examine the books, records, and documents of those individuals, and may examine the individual's employees or agents under oath regarding his or her operations. The licensing agency may cooperate with any agency of the state or federal government, other states, agencies, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation. The licensing agency may accept an examination conducted by one of these entities in place of an examination by the licensing agency under this division, unless the licensing agency determines that the examination does not provide information necessary to enable the licensing agency to fulfill its responsibilities under this division.

(b) The licensing agency may impose a penalty against an individual whose affairs are examined or reviewed pursuant to subdivision (a) based on the findings of the examination or review. The licensing agency may suspend or revoke the license or registration, or both, of a licensed individual who fails to pay that penalty, subject to existing procedures related to suspension or revocation of a license. In addition, the licensing agency may bring an action in an appropriate court of this state to collect payment of the penalty.

(c) Penalties collected pursuant to subdivision (b) shall be deposited into the licensing agency's fund, and shall, upon appropriation by the Legislature, be available for expenditure for expenses related to the administration of this division and in accordance with federal law.

(d) The statement of the findings of an examination conducted pursuant to this section shall belong to the licensing agency and shall not be disclosed to anyone other than the examined person, law enforcement officials, or other state or federal regulatory agencies for further investigation and enforcement. Reports required of those persons by the licensing agency under this division and results of examinations performed by the licensing agency under this division are the property of the licensing agency.

4992.8. A mortgage loan originator shall make any special reports to the licensing agency that the licensing agency may, from time to time, require.

4992.85. (a) The licensing agency shall regularly report violations of this division, as well as enforcement actions taken against a mortgage loan originator to whom a registration has been issued, and enforcement actions taken against any individual for failure to obtain a registration as a mortgage loan originator, to the Nationwide Mortgage Licensing System and Registry.

(b) The licensing agency shall establish a process that may be used by mortgage loan originators to challenge information entered into the Nationwide Mortgage Licensing System and Registry by the licensing agency.

(c) The licensing agency is authorized to promulgate regulations specifying the recordkeeping requirements that mortgage loan originators shall satisfy.

SEC. 4. Section 5505.5 is added to the Financial Code, to read:

5505.5. Each employee of a savings association organized under this division, if acting as a mortgage loan originator, as defined in Section 4992, shall apply, either electronically or in writing to the commissioner, for a registration to act as a mortgage loan originator. The commissioner may prescribe the format and content of the mortgage loan originator registration application, which shall meet the minimum requirements for licensing of a mortgage loan originator pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. Sec. 5101 et seq.).

SEC. 5. Section 14157 is added to the Financial Code, to read:

14157. Each employee of a credit union organized under this division, if acting as a mortgage loan originator, as defined in Section 4992, shall apply, either electronically or in writing to the commissioner, for a registration to act as a mortgage loan originator. The commissioner may prescribe the format and content of the mortgage loan originator registration application, which shall meet the minimum requirements for licensing of a mortgage loan originator pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. Sec. 5101 et seq.).

SEC. 6. Section 22113 is added to the Financial Code, to read:

22113. An individual licensee and each employee of a licensee, if acting as a mortgage loan originator, as defined in Section 4992, shall apply, either electronically or in writing to the commissioner, for a registration to act as a mortgage loan originator. The commissioner may prescribe the format and content of the mortgage loan originator registration application, which shall meet the minimum requirements for licensing of a mortgage loan originator pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. Sec. 5101 et seq.).

SEC. 7. Section 50131 is added to the Financial Code, to read:

50131. An individual licensee and each employee of a licensee, if acting as a mortgage loan originator, as defined in Section 4992, shall apply, either electronically or in writing to the commissioner, for a registration to act as a mortgage loan originator. The commissioner may prescribe the format and content of the mortgage loan originator registration application, which shall meet the minimum requirements for licensing of a mortgage loan originator pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. Sec. 5101 et seq.).

SEC. 8. The provisions of this act shall be construed in conformity with the requirements imposed by the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. Sec. 5101 et seq.). The appropriate licensing agency, as defined in subdivision (a) of Section 4992 of the Financial Code, shall ensure compliance with those standards, and may adopt regulations to implement Division 1.9 (commencing with Section 4992) of the Financial Code.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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